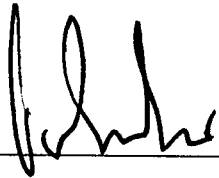


By



41 B. No. 1238

A BILL TO BE ENTITLED

AN ACT

relating to the competence of an applicant for the issuance of a permit from or the renewal, amendment, or transfer of a permit issued by the Texas Air Control Board, the Texas Water Commission, or the Texas Department of Health.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The Texas Clean Air Act (Article 4477-5, Vernon's Texas Civil Statutes) is amended by adding Sections 3.281 and 3.282 to read as follows:

Sec. 3.281. COMPETENCE OF APPLICANT. (a) In this section "permit" means a permit or special permit that the board issues, amends, renews, or transfers under this Act.

(b) The board may not issue, amend, renew, or authorize transfer of a permit under this Act unless the board determines that the applicant is competent to operate the facility for which the issuance, amendment, renewal, or transfer of the permit is sought. In determining the applicant's competence, the board shall consider any appropriate factors, including an applicant's:

(1) financial ability to properly conduct the activity involved;

(2) environmental compliance record, including compliance with this Act and any rules adopted or orders issued under this Act; and

(3) technical competence to operate the facility.

1 (c) To assist the board in determining an applicant's
2 competence under this section, each applicant for the issuance,
3 amendment, renewal, or transfer of a permit under this Act must
4 provide to the board the name and address of each person with an
5 ownership interest of five percent or more in the facility for
6 which the issuance, amendment, renewal, or transfer of the permit
7 is sought.

8 (d) If a hearing is held under Section 3.271 of this Act
9 concerning the issuance, renewal, or transfer of a permit, the
10 board shall include in that proceeding a determination of the
11 applicant's competence as provided by this section.

12 Sec. 3.282. TRANSFER OF PERMIT. (a) If there is a change
13 of control in regard to a permitted facility or the holder of a
14 permit, the permittee must apply to the board for an authorization
15 to transfer the permit. Unless the transfer is requested and
16 approved within a time limit established by rule of the board, the
17 permit expires.

18 (b) In this section, "change of control" means a
19 transaction, or series of transactions occurring within a one-year
20 period, that results in a change in the persons holding 40 percent
21 or more of:

22 (1) the voting securities of a corporation; or

23 (2) the ownership interest of another entity.

24 SECTION 2. Sections 3.271(a), (b), and (c), Texas Clean Air
25 Act (Article 4477-5, Vernon's Texas Civil Statutes), are amended to
26 read as follows:

27 (a) Within the period required by board rule, a person

1 applying for a permit or special permit under Section 3.27, ~~[or]~~
2 review of a permit under Subsection (g) of Section 3.28 of this
3 Act, or a person seeking to qualify for a transfer of a permit or
4 special permit under Section 3.281 of this Act shall publish notice
5 of intent to obtain a permit or special permit or permit review at
6 least one time in a newspaper with general circulation in the
7 county in which the facility is located or to be located.
8 Publication of additional notice may be required by board rule.
9 Notice must include:

10 (1) a description of the location or proposed location
11 of the facility;

12 (2) the fact that a person who may be affected by
13 emissions of air contaminants from the facility or proposed
14 facility is entitled to request a hearing from the board;

15 (3) the manner in which the board may be contacted for
16 further information; and

17 (4) any other information the board by rule requires.

18 (b) At the site of any facility or proposed facility for
19 which a permit application is submitted under Section 3.27, ~~[or]~~ a
20 review application is submitted under Subsection (g) of Section
21 3.28 of this Act, or an application for the transfer of a permit is
22 submitted under this Act, the applicant shall place a sign
23 declaring the filing of an application for a permit or review or
24 transfer of a permit for a facility at the site and stating the
25 manner in which the board may be contacted for further information.
26 The board shall adopt any rules necessary to carry out this
27 subsection.

1 (c) If a person who may be affected by the emissions makes a
2 request for a hearing within the period set for hearing requests by
3 board rules, the board or its delegate must hold a public hearing
4 on the permit, review, ~~[or]~~ special permit application, or transfer
5 of permit or special permit application before granting the permit,
6 continuance, ~~[or]~~ special permit, or transfer of permit or special
7 permit. The board is not required to hold a hearing if the basis
8 of a request is determined to be unreasonable. In addition, if an
9 elected official from the general area in which the facility or
10 proposed facility is located makes a request for a hearing within
11 the period set for hearing requests by board rules, the board or
12 its delegate must hold a hearing on the permit, review, ~~[or]~~
13 special permit application, or transfer of permit or special permit
14 application before granting the permit, continuance, or special
15 permit, or transfer of permit or special permit. The board shall
16 give notice of a hearing under this subsection as provided by
17 Section 3.17 of this Act. For purposes of this subsection, elected
18 official means a member of the Texas Legislature.

19 SECTION 3. Subchapter B, Chapter 26, Water Code, is amended
20 by adding Sections 26.0282 and 26.0283 to read as follows:

21 Sec. 26.0282. COMPETENCE OF APPLICANT. (a) The commission
22 may not issue, amend, renew, or transfer a permit under this
23 subchapter unless the commission determines that the applicant is
24 competent to operate the sewer system, treatment facility, or
25 disposal system from which waste is to be discharged under the
26 permit. In determining the applicant's competence, the commission
27 shall consider any appropriate factors, including the applicant's:

1 (1) financial ability to properly conduct the activity
2 involved;

3 (2) environmental compliance record, including
4 compliance with this code and any rules adopted and orders issued
5 under this code; and

6 (3) technical competence to operate the sewer system,
7 treatment facility, or disposal system.

8 (b) To assist the commission in determining an applicant's
9 competence under this section, each applicant for the issuance,
10 amendment, renewal, or transfer of a permit under this subchapter
11 must provide to the commission the name and address of each person
12 with an ownership interest of five percent or more in the sewer
13 system, treatment facility, or disposal system for which the
14 issuance, amendment, renewal, or transfer of the permit is sought.

15 (c) If a hearing is held under Section 26.028 of this code
16 concerning the issuance, amendment, renewal, or transfer of a
17 permit, the commission shall include in that proceeding a
18 determination of the applicant's competence as provided by this
19 section.

20 Sec. 26.0283. TRANSFER OF PERMIT. (a) If there is a change
21 of control in regard to a permitted facility or the holder of a
22 permit, the permittee must apply to the commission for an
23 authorization to transfer the permit. Unless the transfer is
24 requested and approved within a time limit established by rule of
25 the commission, the permit expires.

26 (b) In this section, "change of control" means a
27 transaction, or series of transactions occurring within a one-year

1 period, that results in a change in the persons holding 40 percent
2 or more of:

3 (1) the voting securities of a corporation; or

4 (2) the ownership interest of another entity.

5 SECTION 4. Section 26.028(a), Water Code, is amended to read
6 as follows:

7 (a) Except as provided in Subsections (b) and (c) of this
8 section, notice shall be given to the persons who in the judgment
9 of the commission may be affected by an application for a permit,
10 permit amendment, or renewal of a permit, or transfer of a permit
11 under Section 26.0282 of this code. For any application involving
12 an average daily discharge of five million gallons or more, the
13 notice shall be given not later than 20 days before the date on
14 which the commission acts on the application, to each county judge
15 in the county or counties located within 100 statute miles of the
16 point of discharge who have requested in writing that the
17 commission give that notice and through which water, into or
18 adjacent to which waste or pollutants are to be discharged under
19 the permit, flows after the discharge. The commission, on the
20 motion of a commissioner, or on the request of the executive
21 director or any affected person, shall hold a public hearing on the
22 application for a permit, permit amendment, [or] renewal of a
23 permit, or transfer of a permit under Section 26.0282 of this code.

24 SECTION 5. Subchapter B, Chapter 27, Water Code, is amended
25 by adding Sections 27.0131 and 27.0132 to read as follows:

26 Sec. 27.0131. COMPETENCE OF APPLICANT. (a) The commission
27 may not issue, amend, renew, or transfer a permit under this

1 subchapter unless the commission determines that an applicant is
2 competent to operate the injection well for which the issuance,
3 amendment, renewal, or transfer of the permit is sought. In
4 determining the applicant's competence, the commission shall
5 consider any appropriate factors, including the applicant's:

6 (1) financial ability to properly conduct the activity
7 involved;

8 (2) environmental compliance record, including
9 compliance with this code and any rules adopted or orders issued
10 under this code; and

11 (3) technical competence to operate the injection
12 well.

13 (b) To assist the commission in determining an applicant's
14 competence under this section, each applicant for the issuance,
15 amendment, renewal, or transfer of a permit under this subchapter
16 must provide to the commission the name and address of each person
17 with an ownership interest of five percent or more in the injection
18 well for which the issuance, amendment, renewal, or transfer of the
19 permit is sought.

20 (c) If a hearing is held under Section 27.018 of this code
21 concerning the issuance or transfer of a permit, the commission
22 shall include in that proceeding a determination of the applicant's
23 competence as provided by this section.

24 Sec. 27.0132. TRANSFER OF PERMIT. (a) If there is a change
25 of control in regard to a permitted facility or the holder of a
26 permit, the permittee must apply to the commission for an
27 authorization to transfer the permit. Unless the transfer is

1 requested and approved within a time limit established by rule of
2 the commission, the permit expires.

3 (b) In this section, "change of control" means a
4 transaction, or series of transactions occurring within a one-year
5 period, that results in a change in the persons holding 40 percent
6 or more of:

7 (1) the voting securities of a corporation; or

8 (2) the ownership interest of another entity.

9 SECTION 6. Sections 27.018(a) and (b), Water Code, are
10 amended to read as follows:

11 (a) If it is considered necessary and in the public
12 interest, the commission may hold a public hearing on the
13 application. The commission shall hold a hearing on a permit
14 application for an injection well to dispose of industrial and
15 municipal waste or the application of the transfer of a permit
16 under Section 27.0131 of this code if a hearing is requested by a
17 local government located in the county of the proposed disposal
18 well site or by an affected person. In this subsection, "local
19 government" has the meaning provided for that term by Chapter 26 of
20 this code.

21 (b) The commission by rule shall provide for giving notice
22 of the opportunity to request a public hearing on a permit
23 application or the application of the transfer of a permit under
24 Section 27.0131 of this code. The rules for notice shall include
25 provisions for giving notice to local governments and affected
26 persons. The commission shall define "affected person" by rule.

27 SECTION 7. The Solid Waste Disposal Act (Article 4477-7,

Vernon's Texas Civil Statutes) is amended by adding Sections 4B and 4C to read as follows:

Sec. 4B. COMPETENCE OF APPLICANT. (a) The department or commission may not issue, amend, renew, extend, or transfer a permit within its jurisdiction under this Act unless the department or commission determines that the applicant is competent to operate the facility for which the issuance, amendment, renewal, or transfer of the permit is sought. In determining the applicant's competence, the department or commission shall consider any appropriate factors, including the applicant's:

(1) financial ability to properly conduct the activity involved;

(2) environmental compliance record, including compliance with this Act and any rules adopted or orders issued under this Act; and

(3) technical competence to operate the facility.

(b) To assist the department or commission in determining an applicant's competence under this section, each applicant for the issuance, amendment, renewal, or transfer of a permit under this Act must provide to the department or commission with jurisdiction the name and address of each person with an ownership interest of five percent or more in the facility for which the issuance, amendment, renewal, or transfer of the permit is sought.

(c) If a hearing is held concerning the issuance, amendment, renewal, extension, or transfer of a permit under this Act as provided by Section 4(e)(4) of this Act, the department or commission shall include in that proceeding a determination of the

1 applicant's competence as provided by this section.

2 Sec. 4C. TRANSFER OF PERMIT. (a) If there is a change of
3 control in regard to a permitted facility or the holder of a
4 permit, the permittee must apply to the department or commission,
5 as applicable, for an authorization to transfer the permit. Unless
6 the transfer is requested and approved within a time limit
7 established by rule of the department or commission, the permit
8 expires.

9 (b) In this section, "change of control" means a
10 transaction, or series of transactions occurring within a one-year
11 period, that results in a change in the persons holding 40 percent
12 or more of:

13 (1) the voting securities of a corporation; or

14 (2) the ownership interest of another entity.

15 SECTION 8. Section 4(e)(4), Solid Waste Disposal Act
16 (Article 4477-7, Vernon's Texas Civil Statutes), is amended to read
17 as follows:

18 (4) Before a permit is issued, amended, extended, or
19 renewed or a transfer is approved under Section 4B of this Act, the
20 state agency to which the application is submitted shall provide an
21 opportunity for a hearing to the applicant and persons affected;
22 the state agency may also hold such a hearing upon its own motion.

23 SECTION 9. This Act takes effect September 1, 1989, and
24 applies only to an application for the issuance, amendment,
25 renewal, or transfer of a permit that is:

26 (1) submitted to the Texas Air Control Board, the
27 Texas Water Commission, or the Texas Department of Health on or

1 after September 1, 1989; or

2 (2) pending for consideration by the Texas Air Control
3 Board, the Texas Water Commission, or the Texas Department of
4 Health on September 1, 1989.

5 SECTION 10. The importance of this legislation and the
6 crowded condition of the calendars in both houses create an
7 emergency and an imperative public necessity that the
8 constitutional rule requiring bills to be read on three several
9 days in each house be suspended, and this rule is hereby suspended.

H. B. No. 1238

By *[Signature]*

A BILL TO BE ENTITLED

AN ACT

relating to the competence of an applicant for the issuance of a permit from or the renewal, amendment, or transfer of a permit issued by the Texas Air Control Board, the Texas Water Commission, or the Texas Department of Health.

FEB 20 1989

1. Filed with the Chief Clerk.

MAR 2 1989

2. Read first time and Referred to Committee on

Environmental Affairs

3. Reported ___ favorably (as amended) and sent to Printer at ___
(as substituted)

4. Printed and distributed at ___

5. Sent to Committee on Calendars at ___

6. Read second time (amended); passed to third reading (failed) by (Non-Record Vote)
(Record Vote of ___ yeas, ___ nays, ___
present, not voting).

7. Motion to reconsider and table the vote by which H.B. ___ was ordered
engrossed prevailed (failed) by a (Non-Record Vote) (Record Vote of ___ yeas,
___ nays, and ___ present, not voting).

8. Constitutional Rule requiring bills to be read on three several days suspended (failed
to suspend) by a four-fifths vote of ___ yeas, ___ nays, and ___
present, not voting).

9. Read third time (amended); finally passed (failed) by (Non-Record Vote) (Record Vote
of ___ yeas, ___ nays, ___ present, not voting).

10. Caption ordered amended to conform to body of bill.

11. Motion to reconsider and table the vote by which H. B. ___ was finally passed
prevailed (failed) by a (Non-Record Vote) (Record Vote of ___ yeas, ___
nays, and ___ present, not voting).

12. Ordered Engrossed at ___

13. Engrossed.

14. Returned to Chief Clerk at ___

15. Sent to Senate.

Chief Clerk of the House

16. Received from the House

17. Read, referred to Committee on ___

18. Reported favorably

19. Reported adversely, with favorable Committee Substitute; Committee Substitute read
first time.

20. Ordered not printed.

21. Regular order of business suspended by
(a viva voce vote.)
(___ yeas, ___ nays.)

_____ 22. To permit consideration, reading and passage, Senate and Constitutional Rules
suspended by vote of _____ yeas, _____ nays.

_____ 23. Read second time _____ passed to third reading by:
(a viva voce vote.)
(_____ yeas, _____ nays.)

_____ 24. Caption ordered amended to conform to body of bill.

_____ 25. Senate and Constitutional 3-Day Rules suspended by vote of _____ yeas,
_____ nays to place bill on third reading and final passage.

_____ 26. Read third time and passed by
(a viva voce vote.)
(_____ yeas, _____ nays.)

OTHER ACTION:

OTHER ACTION:

Secretary of the Senate

_____ 27. Returned to the House.

_____ 28. Received from the Senate (with amendments.)
(as substituted.)

_____ 29. House (Concurred) (Refused to Concur) in Senate (Amendments)
(Substitute) by a (Non-Record
Vote) (Record Vote of _____ yeas, _____ nays, _____ present,
not voting).

_____ 30. Conference Committee Ordered.

_____ 31. Conference Committee Report Adopted (Rejected) by a (Non-Record Vote) (Record
Vote of _____ yeas, _____ nays, and _____ present, not voting).

_____ 32. Ordered Enrolled at _____